

THE HONORABLE JOHN H. CHUN

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NXP USA, INC., and NXP B.V.,

Plaintiffs,

v.

IMPINJ, INC.,

Defendant.

Case No. 2:20-cv-01503-JHC

STIPULATED MOTION AND  
ORDER TO SEAL

**NOTE ON MOTION CALENDAR:  
JULY 8, 2022**

**I. INTRODUCTION**

Plaintiffs NXP USA, Inc. and NXP B.V. (together, “NXP”) and Defendant Impinj, Inc. (“Impinj”) jointly move the Court to maintain under seal the unredacted version of Impinj’s Motion for Leave to File Amended Answer, filed on June 21, 2022 at docket 179, pursuant to Local Civil Rule 5(g).

**II. BACKGROUND**

On June 21, 2022, Impinj filed a Motion for Leave to File Amended Answer. Dkt. 179. In that filing, Impinj included certain information NXP considers to be, and designated under the Protective Order (Dkt. 77) as, confidential, specifically the dollar amount of a paid licensing fee. *See* Dkt. 179 at p. 9. NXP notified Impinj of the issue as soon as NXP became aware of it, at

which point Impinj requested by phone that the Court seal the filing at docket 179. The Court provisionally sealed the filing on June 27, 2022 and also directed Impinj to file a redacted version of the Motion for Leave to File Amended Answer. June 27, 2022 Notice of Docket Text Modification. On June 29, 2022, Impinj filed a redacted version of the Motion for Leave to File Amended Answer. Dkt. 183. The parties believe that the minimal redactions on page 5 of the Motion for Leave to File Amended Answer (only two words) protect against the disclosure of confidential information without interfering with the public's access to judicial records, and request that the Court keep the unredacted version of Impinj's Motion for Leave to File Amended Answer under seal.

### III. CERTIFICATION

In accordance with Local Civil Rule 5(g)(3)(A), Kaitlin Crowder (for NXP) and Ramsey Al-Salam (for Impinj) engaged in email discussions on June 27, 2022 regarding Impinj's filing at docket 179, and agreed that Impinj immediately would request that the Court seal that filing because it includes confidential commercial information. At the Court's direction, Impinj then filed with the Court a public version of the Motion for Leave to File Amended Answer containing only minimal redactions. Dkt. 183 (redacting two words). On July 7, 2022, counsel for NXP and Impinj engaged in additional discussions relating to the present stipulated motion.

### IV. ARGUMENT

#### A. The "Good Cause" Standard Applies to NXP's Request for the Filing at Docket 179 to Remain Sealed.

The standard for determining whether to seal a document depends "on whether the motion at issues is more than tangentially related to the underlying cause of action." *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098 (9th Cir. 2016). If the records at issue are more than tangentially related to the merits of a case, the "compelling reasons" standard applies to the motion

1 to seal. *Id.* at 1098-1102. But if the records are only tangentially related to the merits, the less  
 2 exacting “good cause” standard applies. *Id.*

3 Because the information NXP seeks to maintain under seal (a dollar amount) is not related  
 4 to the merits NXP needs only to show “good cause” to maintain Impinj’s unredacted motion under  
 5 seal.

6 **B. The Parties Agree that Good Cause Exists for the Filing at Docket 179 to Remain**  
 7 **Sealed and for a Version with only Limited Redactions to be Publicly Filed.**

8 Federal courts consistently recognize that the risk of disclosure of confidential and  
 9 commercially sensitive information satisfies the more exacting “compelling reasons” standard and  
 10 have permitted the filing under seal of documents containing such information. *See, e.g., In re*  
 11 *Elec. Arts, Inc.*, 298 F. App’x 568, 569-70 (9th Cir. 2008) (holding it was error not to seal  
 12 “confidential and commercially sensitive information,” including pricing terms, royalty rates, and  
 13 guaranteed minimum payment terms in a licensing agreement); *O’Donnell/Salvatori Inc. v.*  
 14 *Microsoft Corp.*, No. C20-882-MLP, 2020 WL 3962132, at \*3 (W.D. Wash. July 13, 2020)  
 15 (sealing material which “appears to be confidential and commercially sensitive”); *see also* Fed. R.  
 16 Civ. P. 26(c)(1)(G) (trial court has broad discretion to permit sealing of court documents to protect  
 17 “a trade secret or other confidential research, development, or commercial information”). This is  
 18 because “[e]very court has supervisory power over its own records and files” and thus an  
 19 obligation “to insure that its records are not used . . . as sources of business information that might  
 20 harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598  
 21 (1978). Where the material sought to be sealed “includes information about proprietary business  
 22 operations, a company’s business model or agreements with clients, there are compelling reasons  
 23 to seal the material” which “outweigh[] the general public interest in understanding the judicial  
 24 process.” *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491, 2011 WL  
 25 1630338, at \*6 (D. Nev. Apr. 29, 2011).

1 Here, the parties agree that good cause exists for Impinj's unredacted Motion for Leave to  
2 File Amended Answer (Dkt. 179) to remain sealed. The unredacted motion discloses confidential  
3 commercial information relating to the price paid for certain of NXP's licensing agreements. This  
4 information is not generally known to NXP's current and potential licensing partners, and NXP  
5 will suffer significant injury to its competitive standing if it is disclosed, including potentially  
6 diminished future negotiating power. *See Fed. Trade Comm'n v. Amazon.com, Inc.*, No. C14-  
7 1038-JCC, 2016 WL 4162440, at \*1 (W.D. Wash. Mar. 22, 2016) (sealing information regarding  
8 Amazon's refund rates, which were deemed sensitive commercial information). Further, because  
9 Impinj's Motion for Leave to File Amended Answer already has been filed, there is no less  
10 restrictive alternative to protect NXP from competitive harm other than to maintain Impinj's  
11 unredacted motion at docket 179 under seal. A version of the motion with limited redactions  
12 already has been publicly filed.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, NXP and Impinj respectfully request that this Court maintain  
15 under seal the unredacted version of Impinj's Motion for Leave to File Amended Answer, filed on  
16 June 21, 2022 at docket 179.

17  
18  
19  
20  
21  
22  
23  
24  
25

DATED this 8th day of July, 2022.

PERKINS COIE LLP

HARRIGAN LEYH FARMER & THOMSEN LLP

By: s/Ramsey M. Al-Salam

By: s/Tyler L. Farmer

By: s/Christina J. McCullough

By: s/Bryn R. Pallesen

By: s/Stevan R. Stark

By: s/R. Tyler Kendrick

Ramsey M. Al-Salam, WSBA  
#18822

Christina J. McCullough, WSBA  
#47147

Stevan R. Stark, WSBA #39639

R. Tyler Kendrick, WSBA #55094

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Tel: 206.359.6385

Fax: 206.359.9000

Email: RAISalam@perkinscoie.com

Email:

CMcCullough@perkinscoie.com

Email: SStark@perkinscoie.com

Email: RKendrick@perkinscoie.com

Tyler L. Farmer, WSBA #39912

Bryn R. Pallesen, WSBA #57714

999 Third Avenue, Suite 4400

Seattle, WA 98104

Tel: (206) 623-1700

Fax: (206) 623-8717

Email: tylerf@harriganleyh.com

Email: brynp@harriganleyh.com

JONES DAY

Thomas W. Ritchie (*admitted pro hac vice*)

77 West Wacker Drive

Chicago, IL 60601-1692

Tel: (312) 269-4259

Email: twritch@jonesday.com

T. Kaitlin Crowder (*admitted pro hac vice*)

901 Lakeside Ave

Cleveland, OH 44114

Tel: (216) 586-7347

Email: kcrowder@jonesday.com

Michael C. Hendershot (*admitted pro hac vice*)

Tharan Greg Lanier (*admitted pro hac vice*)

1755 Embarcadero Road

Palo Alto, CA 94303

Tel: (650) 739-3940

Email: mhendershot@jonesday.com

Email: tglanier@jonesday.com

Yury Kalish (*admitted pro hac vice*)

Tracy A. Stitt (*admitted pro hac vice*)

51 Louisiana Avenue, N.W.

Washington D.C. 20001

Tel: (202) 879-3616

Email: ykalish@jonesday.com

Email: tastitt@jonesday.com

*Attorneys for Impinj, Inc.*

Jonathan McNeal Smith  
555 South Flower Street, Fiftieth Floor  
Los Angeles, CA 90071  
Tel: (213) 243-2559  
Email: jonathansmith@jonesday.com

*Attorneys for NXP USA, Inc. and NXP B.V.*

ORDER

Based on the foregoing Stipulated Motion, the Court orders the clerk to maintain under seal the unredacted version of Impinj's Motion for Leave to File Amended Answer, filed on June 21, 2022 at docket 179.

IT IS SO ORDERED

DATED this 8th day of July, 2022.



THE HONORABLE JOHN H. CHUN  
UNITED STATES DISTRICT COURT JUDGE

Presented by:

HARRIGAN LEYH FARMER & THOMSEN LLP

By: s/Tyler L. Farmer

By: s/Bryn R. Pallesen

Tyler L. Farmer, WSBA #39912  
Bryn R. Pallesen, WSBA #57714  
999 Third Avenue, Suite 4400  
Seattle, WA 98104  
Tel: (206) 623-1700  
Fax: (206) 623-8717  
Email: tylerf@harriganleyh.com  
Email: brynp@harriganleyh.com

JONES DAY

Thomas W. Ritchie (*admitted pro hac vice*)  
77 West Wacker Drive  
Chicago, IL 60601-1692  
Tel: (312) 269-4259  
Email: twritchie@jonesday.com

T. Kaitlin Crowder (*admitted pro hac vice*)  
901 Lakeside Ave  
Cleveland, OH 44114  
Tel: (216) 586-7347  
Email: kcrowder@jonesday.com

STIPULATED MOTION AND ORDER TO SEAL - 7  
(Case No. 2:20-cv-01503-JHC)

HARRIGAN LEYH FARMER & THOMSEN LLP  
999 THIRD AVENUE, SUITE 4400  
SEATTLE, WASHINGTON 98104  
TEL (206) 623-1700 FAX (206) 623-8717

Michael C. Hendershot (*admitted pro hac vice*)  
Tharan Greg Lanier (*admitted pro hac vice*)  
1755 Embarcadero Road  
Palo Alto, CA 94303  
Tel: (650) 739-3940  
Email: mhendershot@jonesday.com  
Email: tglanier@jonesday.com

Yury Kalish (*admitted pro hac vice*)  
Tracy A. Stitt (*admitted pro hac vice*)  
51 Louisiana Avenue, N.W.  
Washington D.C. 20001  
Tel: (202) 879-3616  
Email: ykalish@jonesday.com  
Email: tastitt@jonesday.com

Jonathan McNeal Smith  
555 South Flower Street, Fiftieth Floor  
Los Angeles, CA 90071  
Tel: (213) 243-2559  
Email: jonathansmith@jonesday.com

*Attorneys for NXP USA, Inc. and NXP B.V.*

PERKINS COIE LLP

By: s/Ramsey M. Al-Salam

By: s/Christina J. McCullough

By: s/Stevan R. Stark

By: s/R. Tyler Kendrick

Ramsey M. Al-Salam, WSBA #18822  
Christina J. McCullough, WSBA #47147  
Stevan R. Stark, WSBA #39639  
R. Tyler Kendrick, WSBA #55094  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Tel: 206.359.6385  
Fax: 206.359.9000  
Email: RAlSalam@perkinscoie.com  
Email: CMcCullough@perkinscoie.com  
Email: SStark@perkinscoie.com  
Email: RKendrick@perkinscoie.com



1 By: s/Brianna L. Kadjo

2 Brianna L. Kadjo, CO #55578  
3 1900 16<sup>th</sup> Street, Suite 1400  
4 Denver, CO 80202  
5 Tel: (303) 291-2349  
6 Email: bkadjo@perkinscoie.com

7 *Attorneys for Impinj, Inc.*  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25